

安理会权力的法律限制问题研究

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博 士 学 位 论 文

安理会权力的法律限制问题研究

Study on Legal Limits to the Power of the Security Council

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摘要

安理会作为联合国的一个主要机关，担负着维持世界和平与安全的重要职责，并在《联合国宪章》授权下享有强制执行权。冷战结束后，安理会在维护世界和平与安全方面发挥着越来越积极的作用，采取强制措施和实践也大量增加。然而，众多实践也表明，安理会权力的行使在许多方面已经超越了宪章的规定，创造性地承担了许多新的职能，例如对国家内战引起的人道主义危机进行干涉、在打击国际恐怖主义领域行使国际“立法权”、在伊拉克与科威特划界问题上行使“司法权”等等。安理会的这些实践引起了人们的普遍质疑：安理会的这些行为是否超越了其权力限制而成为越权行为？与其他任何国际组织一样，安理会权力也有其法律限制，安理会不得随意超越其权限而行事。联合国的宗旨和原则、《联合国宪章》条文的具体规定以及国际强行法均构成安理会权力的法律限制。此外，宪章对安理会权力的“执法权”定性也构成对安理会权力的隐含限制。比照这些法律限制，安理会的一些行为的确构成越权行为，其法律效果应归于无效。安理会的一些越权行为实际上反映了国际社会的现实要求，即冷战结束后国际安全形势的日益复杂化要求安理会突破原有权力限制扩大其权能。然而，实现国际法治与维持国际和平与安全之间并无必然矛盾，即使面对新安全形势下的紧急情况需要，安理会也可以通过对应对措施的适当调整，达到既遵守法律又解决问题的效果。作为对安理会越权行事的一种国际司法救济手段，国际法院可以通过受理诉讼案件和发表咨询意见，对安理会权力进行间接审查，从而帮助安理会在履行职责过程中加强自身行为的合法性，促进联合国推进国际法治、维持国际和平与安全两大目标的共同实现。

关键词：《联合国宪章》；安理会权力；法律限制

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ABSTRACT

As a principle organ of the UN, the Security Council is conferred enforcement powers by the UN Charter with regard to the maintenance of international peace and security. Since the end of the Cold War, the Security Council has played a rather active role in using its enforcement powers to maintain international peace and security. However, in practice the Security Council has creatively assumed some new functions which may be doubtful according to the UN Charter: intervening a sovereign state with military force for humanitarian reasons, legislating by imposing obligations of counter-terrorism for all states, and adjudicating by determining a disputed boundary between two neighboring countries. These developments have given rise to a question: is it legal for the Security Council to do so? As any other international organization, there are some legal limits to the power of the Security Council which cannot be exceeded. The purposes and principles of the UN, stipulations of the UN Charter, and *jus cogens* are legal limits to the power of the Security Council. Moreover, the “executive” nature of the power constitutes an implied legal limit to the power of the Security Council. According to these legal limits, some acts of the Security Council are *ultra vires* which should be void *ab initio*. But in fact, some acts *ultra vires* of the Security Council reflect the practical needs in the present international society, *i.e.*, the complication of the international security situation makes it necessary for the Security Council to expand its power. However, it is not necessarily conflict between international rule of law and international peace and security, so even facing some emergent needs under the new situation of international security, by handling properly the Security Council can not only resolve problems but also respect rule of law. As a judicial remedy, the ICJ is able to review the power of the Security Council through its contentious jurisdiction and advisory jurisdiction, which can help the Security Council to reinforce the legality of its acts in maintaining international peace and security, and help the UN to achieve its two purposes: promoting international rule of law and maintaining international peace and security.

Key Words: The UN Charter; Power of the Security Council; Legal Limits

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